

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2064

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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FREDERIC D. JENNINGS, :

Petitioner-Appellant, :

-against- :

DOCKET NUMBER
77-2064

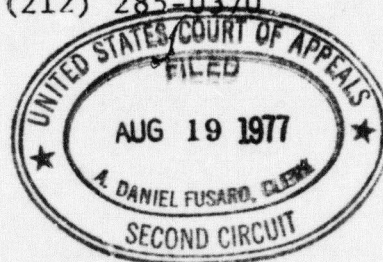
J. LELAND CASSCLES, Superintendent :
of Great Meadow Correctional Facility, :
Comstock, New York, :

Respondent-Appellee. :

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APPENDIX FOR PETITIONER-APPELLANT

KENNETH E. DEMARIO
PIERCE GERETY, JR.
PRISONERS' LEGAL SERVICES
OF NEW YORK
100 Church Street
New York, New York 10007
(212) 285-0370



DATED: New York, New York
August, 1977

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I. DISTRICT COURT DOCKET SHEET

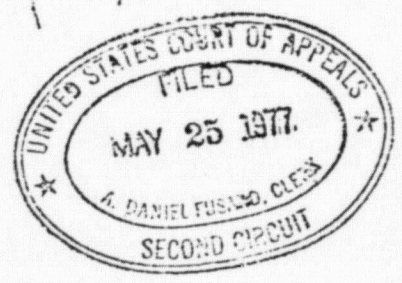
U.S.A. EX REL JENNINGS, FREDERIC D.

CASSCLES, J. LELAND

UNITED STATES OF AMERICA ex. rel.
FREDERIC D. JENNINGS

J. LELAND CASSCLES,
SUPERINTENDENT OF GREAT MEADOW
CORRECTIONAL FACILITY, COMSTOCK
NEW YORK

T-7468



CAUSE

HABEAS CORPUS

ATTORNEYS

FOR PLTFF:

Albany Law School Legal
Assistance Project
Lanny Earl Walter
80 New Scotland Avenue
Albany, New York 11208
(518) 465-1545

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JENNINGS VS CASSCH

DATE	NR.	PROCEEDINGS	
10/2/75		By PLATT, J.- Order filed granting plttff leave to proceed in forma pauperis	(1)
10/2/75		Petition for Habeas corpus filed	(2)
12-2-75		Letter dtd 11-24-75 from petitioner filed. (mg)	(3)
12-2-75		By COSTANTINO, J.-Order to show cause ret 12-29-75 why an order should not be made vacating petitioner's conviction filed.	(4)
12-15-75		Affidavit of Service by mail filed. (mg)	(5)
12-29-75		Before COSTANTINO, J.-Case called. Order to show cause why an order should not be made vacating petitioner's conviction for murder marked off calendar. (mg)	--
12-30-75		Affidavit of Rhonda Amkraut Bayer & memorandum of law in opposition to application for a writ of habeas corpus filed. <i>W</i>	(6/7)
1-20-76		Copy of letter from Lanny E. Walter to Rhonda Amkraut Bayer dtd 1-5-76 re hearing on 2-3-76 filed. <i>W</i>	(8)
2-3-76		Before COSTANTINO, J.- Case called. Civil motion adjd to 2-17-76	
2-4-76		Letter from Stephen Tafaro to Judge Costantino filed.	(9)
2-17-76		Petitioner's reply of memo of law filed.	(1)
11-8-76		By COSTANTINO, J.--Memorandum and order denying petition filed.	(1)
11-9-76		Judgment that the petitioner take nothing of the repsondent and that the petition for a writ of habeas corpus is denied filed.	(1)
3/31/77		BY COSTANTINO, J. CERTIFICATE OF PROBABLE CAUSE dtd 3/25/77. that there exists probable cause for appeal from the denial of the writ of habeas corpus, filed. <i>lg</i>	(
5-23-77		Notice of appeal filed. Copy to C of A. mg	

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II. OPINION AND ORDER OF DISTRICT COURT
(Costantino, J.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FREDERIC D. JENNINGS,

Petitioner,

P. L. S. N. Y. - ALBANY
75-C-1630

v.

J. LELAND CASSCLES, SUPERINTENDENT
OF GREAT MEADOW CORRECTIONAL FACILITY,
COMSTOCK, NEW YORK,

MEMORANDUM
and ORDER

NOV 8 1976

Respondent.

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COSTANTINO, D.J.

On August 21, 1970, Schyler Edgar Carman discovered a badly decomposed body in a wooded area near his home. Through the use of dental records and items of clothing and jewelry found with the remains, the deceased was identified as Mary Eloise Carman, Mr. Carman's daughter. The cause of death was tentatively determined to be manual strangulation following a sexual attack.

At the time the deceased was discovered, petitioner was incarcerated in Suffolk County jail in New York awaiting trial on two separate rape charges, for which he was subsequently convicted and for which he is presently incarcerated. Because of certain

similarities surrounding the death of Mary Eloise Carman and the two attacks with which petitioner was charged, police detectives requested petitioner's permission to speak to him. Petitioner signed the requisite permission slip and was questioned in jail on August 26, 1970 from 10:40 a.m. to 11:30 a.m. and again from 1:05 p.m. until 4:30 p.m., a period of some four hours and fifteen minutes. During neither period of questioning did the police advise petitioner of his rights or attempt to identify and locate his attorney.

During the morning session, police questioned petitioner generally about his family, sexual problems, and the other charges then pending against him. During the afternoon session, however, petitioner revealed certain information about the death of Mary Eloise Carman, including numerous details not known to the general public. Petitioner explained his knowledge of the murder by saying that a "friend" had committed the crime and then had shown him the body. He also offered an alibi for the night the crime was committed and explained that his failure to report the crime was due to his fear of being implicated, since he had previously been arrested on rape charges.

The police left petitioner and during the evening of August 26th checked out the alibi and the story that he had given. The alibi witness denied being with petitioner on the night in question and the police were unable to confirm the existence of petitioner's "friend."

On August 27th, the police detectives returned to the Suffolk County jail and interrogated petitioner for almost two hours. Petitioner again signed a permission slip and on this occasion he was advised of his rights prior to questioning. The police had petitioner repeat the story he had told the day before and they then pointed out inconsistencies and inaccuracies in the story. Finally, they informed him that his story had not checked out and that they believed that he had committed the murder. Petitioner finally confessed to the murder of Mary Eloise Carman.

At a pretrial suppression hearing, petitioner's statements of August 26th were suppressed because of the failure of the police to give him his rights on that day. His confession, however, was adjudged to have been given voluntarily and was admitted into evidence against him.

Petitioner was convicted of the crime of murder and sentenced to serve a term of 25 years to life. His conviction was unanimously affirmed by the Appellate Division, People v. Jennings, 40 App. Div. 2d 25 (2d Dep't, 1973), and the Court of Appeals, 33 N.Y.2d 880, 352 N.Y.S.2d 444 (1973). Petitioner then filed a pro se petition for a writ of habeas corpus with this court alleging (1) that his confession was the direct result of the illegally obtained statements of August 26, and that as such it was "fruit of the poisonous tree" and should not have been admitted, and (2) that there was a failure of proof to sustain a finding that the crime charged had been committed. The petition was denied by order of August 14, 1974. Petitioner, with benefit of legal counsel, has now filed this second petition for a writ of habeas corpus alleging (1) that his confession was involuntary and (2) that the confession was "fruit of the poisonous tree."

As a threshold question, this court must determine whether this petition should be entertained in light of the previous application for the same relief. Section 2244(b) of Title 28 of the United States Code provides in essence that where a petition for a writ

of habeas corpus has been denied, a subsequent petition for the writ "need not" be heard unless the second application raises some ground not raised in the prior application. It is clear, in comparing petitioner's two petitions, that the second petition raises no issues not raised in the first petition. However, since the first petition was submitted pro se, and since pro se applications and pleadings are to be liberally construed, see, e.g., Haines v. Kerner, 404 U.S. 519 (1972), it is concluded that the interests of justice would best be served by not precluding review of the arguments raised in the present petition.

Petitioner raises two grounds for overturning his conviction. He contends (1) that notwithstanding the giving of the full Miranda warnings (Miranda v. Arizona, 384 U.S. 436 (1966)) on the second day prior to the conversations which led to his confession, his statements of the first day so overbore his mind on the second day as to render the confession involuntary; and (2) that the confession should have been suppressed as "fruit" of the illegally obtained statements of the first day. Since each of the contentions is without merit, the petition is denied.

With respect to the first contention, it must be determined at the outset whether petitioner is entitled to federal habeas corpus review of the state court's finding as to the voluntariness of the confession.

The Supreme Court has indicated that the proper forum in which to decide the voluntariness of a state defendant's confession is the state courts, and that absent some basic constitutional defect in either the procedure utilized or the standard applied to determine voluntariness, the state court finding is final. Rogers v. Richmond, 365 U.S. 534 (1966). Moreover, 28 U.S.C. § 2254(d) mandates that the federal courts give deference to the determination of the state courts on the voluntariness issue. See Tanner v. Vincent (2d Cir., 1976) (Docket No. 76-2010) (August 27, 1976).

It has been the law in this circuit for many years that the trial judge's decision as to the voluntariness of a confession is final and will not be disturbed unless it is clearly erroneous. See, e.g., United States v. Boston, 508 F.2d 1171 (2d Cir., 1974); United States v. Gottfried, 165 F.2d 360 (2d Cir., 1948), cert. denied, 333 U.S. 860 (1948). While Boston and

Gottfried involved defendants who had been convicted in federal court and were seeking appellate court review of the district court's voluntariness determination, the rule enunciated there as to the finality of the trial judge's finding should, in light of Rogers v. Richmond, supra, apply as well to situations in which those convicted in state court seek federal habeas corpus review of the voluntariness determination. In this case, petitioner was afforded a full and fair opportunity to contest the voluntariness of his confession in the state trial court, in accordance with Jackson v. Denno, 378 U.S. 368 (1964) and People v. Huntley, 15 N.Y.2d 72, 225 N.Y.S.2d 72, 225 N.Y.S.2d 72, 255 N.Y.S.2d 838 (1965). The facts as to what transpired during the two days of questioning are not in dispute, so no new evidentiary hearing is required. See Townsend v. Sain, 372 U.S. 293 (1963). Petitioner has alleged no irregularities or defects in the Huntley hearing or in the constitutional standard applied by the trial judge in determining that the confession was voluntary. Rather, he seeks a declaration by this court that the state court simply determined the issue incorrectly. Even if it were proper for this court to review the state court's finding as to voluntariness in

this case, however, that finding would not be disturbed.

In United States v. Pomares, 499 F.2d 1220 (2d Cir., 1974), cert. denied, 419 U.S. 1032 (1974), the test of the voluntariness of a confession was set forth as follows:

whether an examination of all the circumstances discloses that the conduct of law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined. (emphasis added)

See also Rogers v. Richmond, supra; United States v. Ferrara, 377 F.2d 16, 17 (2d Cir.), cert. denied, 389 U.S. 908 (1967).

In this case, there is no evidence of any physical abuse of the defendant. Nor is there evidence of the type of mental or psychological coercion which has rendered confessions involuntary in other cases. See, e.g., Clewis v. Texas, 386 U.S. 707 (1967); Gallegos v. Colorado, 370 U.S. 49 (1962). Indeed, there was far less pressure on the defendant to speak in this case than in other cases in which the confessions were held to be voluntary. See, e.g., United States v. Pomares, supra; United States v. Ferrara, supra. Assuming, without

deciding, that petitioner may have "let the cat out of the bag," see United States v. Bayer, 331 U.S. 532 (1947), by his statements of the first day, those statements created no psychological pressure on petitioner to confess, since he believed that the statements protected him. See United States v. Knight, 395 F.2d 971 (2d Cir., 1968), cert. denied, 395 U.S. 930 (1969). In this case, as in Knight, the careful giving of the Miranda warnings was sufficient to remedy the prior constitutional violation.

There has been no showing here that the state voluntariness hearing was in any way deficient, as specified in 28 U.S.C. § 2254(d). In addition, the record of the Huntley hearing fairly supports the state court's determination of the voluntariness issue. Therefore, the petitioner bears the burden of establishing by convincing evidence that the findings of fact made by the state court at the Huntley hearing were erroneous. Tanner v. Vincent, supra. He has failed to carry that burden, in that he has not contested the correctness of those factual findings, and thus here, as in Tanner, the state court's determination as to voluntariness must be upheld. Petitioner's first contention is therefore without merit.

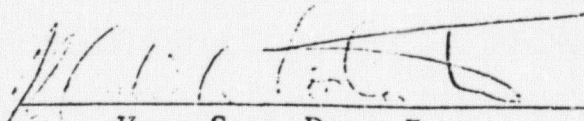
Petitioner's second argument is likewise unpersuasive. While it is true that Wong Sun v. United States, 371 U.S. 471 (1963), held that verbal evidence could be "fruit of the poisonous tree," that fact alone is not dispositive of the issue in this case. Wong Sun dealt with the question of whether oral statements obtained in the wake of a Fourth Amendment violation could be regarded as "fruit" of that violation. "Protection of the Fifth Amendment right against self-incrimination was not the Court's paramount concern [in Wong Sun]." Brown v. Illinois, 422 U.S. 590, 597 (1975).

Petitioner's reliance on Brown v. Illinois, supra, is likewise misplaced. In Brown, the defendant was arrested without probable cause; subsequently he made two in-custody inculpatory statements after he had been given the Miranda warnings. The question to be decided in Brown was whether the giving of the Miranda warnings was sufficient to purge the taint of the Fourth Amendment violation so as to render the otherwise excludable statements admissible. The Supreme Court held that it was not, but was careful to limit its holding to the proposition that the Miranda warnings, by themselves, do not necessarily purge the taint of an illegal arrest. 422 U.S.

at 605.

In essence, petitioner is asking this court to apply the principles of the Fourth Amendment exclusionary rule to a case involving no Fourth Amendment violation. While the Supreme Court stated, in Michigan v. Tucker, 417 U.S. 433 (1974) that "in a proper case" the rule would seem applicable to the Fifth Amendment context as well, it is not necessary for this court to determine if this case is a "proper" one for application of the rule. Assuming, arguendo, that the "fruit of the poisonous tree" doctrine was applicable to the facts of this case, the petitioner's voluntary repetition of his first day's statements, after being given the Miranda warnings on the second day, constituted an intervening act of free will sufficient to purge the primary taint so as to render the confession admissible.

Since the petitioner's confession was neither involuntary nor the fruit of the poisonous tree, the petition is denied. So ordered.


U. S. D. J.

III. MINUTES OF HUNTLEY HEARING IN COUNTY COURT
SUFFOLK COUNTY
pp. 204-239, 248-272

like to have a copy of it before we go along.

THE COURT: Well, I assume they're

oral.

EDWARD HALVERSON, Detective, Badge No. 274,
Suffolk County Police Department, Homicide Squad,
Suffolk County, New York, after having been duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. BUONORA:

Q Detective Halverson, how long have you been a
member of Suffolk County Police Department?

A Approximately nine and a half years.

Q Of those nine and a half years, how long have you
been a detective?

A Five and a half years.

Q And on August 21st of 1970, what was your command?

A At that time I was working out of the Homicide
Squad in Hauppauge.

Q Do you know Detective Richard Dean?

A Yes, I do.

Q Who is he, sir?

A He works with me in the Homicide Squad as my
partner.

Q All right. Detective, on August 21st, of 1970, did you have occasion to go to the vicinity of South 26th Street and Levey Boulevard in Wyandanch?

A Yes, I did.

Q And did you see anything there?

A Yes, I did.

Q And what did you see, officer?

A At that time I was called to investigate what was found to be -- believed the human remains of a body in a wooded area, that was 82 feet south of Levey Boulevard off 26th, South 26th Street in Wyandanch.

Q All right. Now, officer, did there come a time when you ascertained the identification of these remains?

MR. TIGHE: Oh, I object to that, if your Honor please. There's been no testimony, there's nothing here who this person was.

THE COURT: I'll allow it, I'll allow it. Proceed.

MR. BUONORA: Thank you, your Honor.

Q Officer, did you determine the name of that deceased person?

A Yes, I did.

MR. TIGHE: I object to that, if your

Honor please. There's nothing in the case whatsoever about the identification of the remains.

MR. BUONORA: Your Honor, if I might, this is only preliminary to the conversations in any event.

THE COURT: As a hearing, that is primarily, been primarily set up to determine the admissibility of certain alleged statements.

Proceed.

Q Officer, what was the name of that person?

A Mary Eloise Carman.

Q Now, did you commence to undertake an investigation into the death of Mary Eloise Carman?

A Yes, I did.

Q And, officer, in the Homicide Bureau or in the Suffolk County Police Department, do you have certain classifications for investigations?

A Yes, yes, we do.

Q How was this case classified on August 21st of 1970?

MR. TIGHE: I object to that as being incompetent, irrelevant and immaterial.

THE COURT: I'll allow it.

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MR. TIGHE: Something with the department?

THE COURT: I'll allow it.

Q What was that classified as?

A This was classified as a possible homicide.

Q All right. As opposed to a --

A Opposed to a natural death.

Q Was it classified as a murder investigation at that time?

MR. TIGHE: That isn't what he said, your Honor.

THE COURT: Sustained.

MR. BUONORA: All right.

Q Now, Detective, during the course of your investigation into the death of Mary Eloise Carman, did you have occasion to speak to the defendant, Frederick Jennings?

A Yes, I did.

Q And do you see Jennings in the courtroom?

A Yes, I do.

Q Will you point him out, please?

A Right there.

Q Indicating which gentleman?

A That is the black man with black T-shirt.

Q All right. Now, when and where did you speak to Jennings for the first time?

A On August 26th at approximately 10:40 in the a.m. I spoke with Jennings in the Suffolk County Jail in Riverhead.

Q And were you alone or were you with someone?

A I was with my partner, Detective Dean.

Q Detective, this is how many days after you discovered or after you viewed that body on Levey Boulevard?

A That would have been five days later.

Q Officer, in those five days, had you interviewed other persons in connection with this investigation?

A Yes, I did.

Q And on August 21st, 1970, did you know Frederick Jennings?

A No, I didn't.

Q All right. Had you heard of him?

A No, I didn't.

MR. TIGHE: I'll object to that, if your Honor please.

MR. BUONORA: All right.

Q Detective, how did you come to speak to Jennings in the jail, what was the procedure?

A On August 25th, I made a telephone call to the

Suffolk County Jail and I requested to see Frederick Jennings. At that time they advised me that a permission slip signed by Jennings was necessary and they stated they would call me back if he signed a permission slip, agreeing to speak to me. A short time later I received a call from the jail stating that Frederick Jennings would speak to me the following day.

Q All right. And are you aware whether or not this was standard procedure?

A Yes, I am. It is standard procedure.

Q All right. You went in, into the jail on the morning of the 26th?

A That is correct.

Q And where in the jail did you see Jennings for the first time?

A There is a main lobby as you enter into the jail area and just to the left or it would be the east side of the jail lobby is a series of rooms. I spoke to Jennings in one of the middle rooms along with Detective Dean.

Q Detective, what occasioned you to visit Jennings on August 26th?

A At that time I had previously spoken to a number of possibilities as we call them, they were possible suspects in this case. At that time, I had previously determined

that Jennings had been arrested two times before for rape, forcible rape, and because of his -- that he lived close to the scene of the crime and to the scene of -- or to the home of Mary Eloise Carman, I felt he fell in line along with the rest of them as one of the possible suspects.

Q Did you have anything at that time, officer, did you have anything tending to connect Jennings with the commission of any alleged crime at that location?

A No, I didn't.

Q Detective, will you tell the Court in your own words what you said to Jennings and what he said to you and what Detective Dean said, if anything.

A Well, first of all --

MR. TIGHE: Have we established that Detective Dean was there the first day?

THE COURT: Was he with you?

THE WITNESS: Yes, he was.

THE COURT: Proceed.

A First of all, we introduced ourselves and advised him that we were detectives from the Homicide Squad and that I advised him that I was investigating the death of Mary Eloise Carman, who lives a short distance from his home. At that time I stated to him that -- that Mary Eloise Carman

had been -- what we believed to be murdered and possibly raped in the course of the murder. And naturally, because of his two prior arrests, we felt that there were certain similarities and we would like to talk to him about the similarities.

Q Now, these are your words to Jennings, officer?

A That is correct.

Q Okay. What was said then or who spoke then?

A At this point I did most of the talking. I would say almost all of the talking. Frederick Jennings never had -- I spoke to him about his family, I spoke to him about what I believed to be a problem that he had with sex, dealing with these two prior arrests that he had had and I stated that I felt from what I saw in the cases, I felt that he was responsible for the allegations that were made against him. I stated that -- I asked him if he had ever received any kind of treatment as a youth for his sex problem and he stated to me that he didn't. He was never treated for it and this conversation went on along these lines until approximately 11:30 that a.m. where we interrupted so that Frederick Jennings could go to lunch.

Q Now, officer, up until 11:30, was there any, other than the preliminary remarks that you just testified to, was

there any conversation with reference to the body of Mary Eloise Carman found on South 26th Street and Levey Boulevard?

A No, sir.

Q All right. You broke to go to lunch?

A Yes, that is correct.

Q And did there come a time when this interview resumed?

A Yes, at approximately 1:05 that afternoon we returned from lunch and Frederick Jennings returned to the same interview room and we commenced somewhere where we left off.

Q All right. And what was said at that time?

A At that time I -- we spoke again. I asked him questions about his family background, he stated that he did not get along very well with his father and he stated he did get along fairly well with his mother and he said that he got along best with his sister and after a short time, why, he said, why did it take so long for you to get to me? And I said, well, why do you say that? He says, well, I thought you'd come to see me a long time ago. I said, why would you expect us to see you at all? And he says, well, I saw the body. So I said, where did you see the body? At at that time we were sitting at a desk and he with the corner of the

desk, he drew with his finger, he indicated where Levey Boulevard, first of all, he said, this is South 26th Street and I says, right. And he said, now, this other street that comes here and he had a little difficulty pronouncing it, and I said, do you mean Levey Boulevard? And he says, yes, Levey Boulevard. He says, right where it comes together. He says, right at a corner. And could I indicate with my finger as he was describing to me?

Q Please do, officer.

A On the corner of the desk, he said as Levey Boulevard comes this way and it comes together with South 26th Street, he says, there's a barren portion right here where there isn't any trees. There isn't any shrubbery.

Q Indicating drawing of the finger along the desk top?

A Right. Cutting out a corner. The corner area of the intersection of those two streets and he said, the body was right here and he pointed his finger to the exact location, practically where we found the body.

Q All right. When you say the exact location, you mean as described on the desk top?

A Right, as described on the desk top.

Q All right. What was said then, officer?

A I said, I requested him, how did you come about knowing about the body? And he says, my friend killed her, and I said, well, how did your friend kill her? And he said, you mean, you don't know? And I said, no, we don't know. And he says, by strangulation. I says, well, how by strangulation? And he said, like this. And at that time, he took his arm and he made a mugger's type strangle hold.

Q Indicating grasping an arm around the neck?

A Around the neck, that's right.

Q By using the forearm, basically?

A That's right. Now, I asked him, what did the body look like and where was he when he saw the body. He said, and he pointed again right to the barren portion of the corner of Levey Boulevard and South 26th Street and he indicated that he stood right at the edge of the woods on that barren portion, portion, and looked into the woods and was able to see the body at that point. At that time, I told him, I don't believe you can see the body from that point. And he says, well, I did. He says, I could see it from that point. And I says, well, I was there and I don't think you can see it from there and he again told me that he saw the body from standing at that location. I said, well, what did the body look like? And he says, well, he says, it

looked white and he said it was completely nude and there was some, like, some kind of a coat or some dark garment underneath the body and he said that there was some clothes laying right at the feet of the body. At that time, I says, well, could you tell me what happened, how did your friend come to tell you this? He says, well, I've got this friend and I asked him if he would identify him and he says, I don't want to be, I don't want to tell you his name. I don't want to be an informer. So I says, well, tell me how your friend came about telling you this. He says, well, I have this friend that I have from the city and this friend came out and he says, I had to pick him up because he couldn't drive and he came out to my house and this was the night of the concert at the Wyandanch High School and, I says, you remember that? And he says, yes, I remember that because my sister was in the concert and I remember that was the night. He said, this friend, he left his friend at his house at about 9:30 that night. That's 9:30 P.M.

Q Excuse me, officer, When you say his house, whose house?

A I mean Jennings' house. He said that he left his friend at his house that night and he went on the other side of the tracks.

Q He, meaning --

A Jennings said that he himself went on the other side of the tracks. Now, in our prior conversation I had established that when he was talking about the other side of the tracks, he meant Annie Pearl's house who was his girlfriend. Her name was Ann Carter and he said that he went over to see his girlfriend and was with her until approximately 11:30 that night. He said at that time his friend, meaning the same friend that he had left at his house, walked over to Annie Pearl's house. He met him out in the front. They both walked back to the railroad station that was a short distance south of Annie Pearl's house and they had their car parked over there.

Q You say their car, officer?

A Their car. He referred to it as their car at this point.

Q Had there been any conversation about that car or who owned it?

A Not at that point.

Q All right.

A He said they got in the car and he drove his friend back to the city and then he went home. He said that about a week later his friend came back out from the city

and he said his friend said to him, do you want to see a body? And he says, yeah. So at that time they both walked back down to, or they walked to Levey Boulevard and South 26th Street and his friend walked over to that same barren portion that he indicated to me and he pointed in the woods and at that time he looked in and saw the body that he had described. He said, I asked him if he had any conversation with his friend about how the body got there and at that time he said, no, I didn't have any other conversation. I just took my friend back to the city and I -- then I went back home. Now, after that, after he told us that story, we had a further conversation in regard to his friend and we --

MR. TIGHE: Would you fix a time and

place on that?

Q That was the same --

A Same time and same place right after he completed telling us about taking his friend back to the city. At that time I said to him, do you mean to say that you didn't inquire or ask any questions about how, you know, why he did it or anything like that? And he insisted to me at that time, it was none of his business and he don't get involved with his friend's business and he didn't ask him any questions. He said that -- I asked him well, I, -- at that time,

I told him how important this case was in the fact that a very young girl had been murdered and I tried to impress on him that this was of the very serious nature in this case and when it came to something as important as this, that he shouldn't withhold the name of anybody, friendship didn't extend that far, and I spent the rest of my time that day trying to impress him with the serious nature of this incident.

Q Approximately how much time, officer?

A Well, I would say that, for about, approximately an hour to an hour and a half. I spoke to him in addition, after I had heard him relate the story about the body.

Q Did you discuss anything else on August 26th, subsequent to that?

A I tried -- I asked him to describe his friend and the only description he would give about his friend is that he was -- not very heavy and he was small. That was -- that date, I believe that was in substance what he told me.

Q Officer, was there any conversation or did you ask Jennings why, whether or not he reported the finding of the body to the police?

A Yes, I did. I asked him why he didn't report this body laying there in the woods to the police and he

said the reason he didn't do it, because he had a prior arrest for rape and he felt that the police would suspect him.

Q All right. About what time did your conversation terminate on August 26th?

A About 4:30 P.M.

Q Now, officer, at 4:30 P.M. on August 26th, 1970, had you formed any opinions with regard to your conversation with Jennings?

A At that time --

MR. TIGHE: I object to what his opinions are.

MR. BUONORA: Judge, I think this goes to --

MR. TIGHE: What?

MR. BUONORA: I think this goes to the question of what specifically is involved here.

MR. TIGHE: No, I don't think we're concerned with his opinion. This is what we're asked about, making the confession.

THE COURT: Why is his opinion relevant?

MR. BUONORA: I think the opinion is some evidence of the objective factors which the

/Court has to determine, namely, whether or not we're dealing with a suspect at that particular point.

THE COURT: I'll allow it.

MR. TIGHE: Respectfully except.

A At that time -- at that time, the story that was told to me by Frederick Jennings, I felt, was believable and I felt it would be a story that I -- very easy to track down as to who his friend would be and when I left the jail that day I was of the opinion that it was, with not too much investigation, I could determine the name of his friend.

Q Now, officer, did you do anything after leaving the jail that day?

A Yes, I did. I went to the Jennings' home.

Q And where is that, by the way?

A That is at 72 South 25th Street.

Q And what did you do at the Jennings' home?

A At that time, I interviewed Mrs. Jennings, the mother of the defendant.

Q And what, if anything, did you ascertain at that time?

A At that time, I determined that no one in the family had any knowledge of any friend that had come out

from the city or otherwise that Jennings had been associated with.

Q Did you speak to anybody else that night?

A That night, I went to speak to an Annie Carter who is referred to by the defendant as Annie Pearl, and I spoke to her at her home at 38 Washington Avenue in Wyandanch, which was located north of the tracks in Wyandanch.

Q And what, if anything, did you determine as a result of a conversation with Annie Pearl?

A I determined at that time that he, Frederick Jennings, was not at her house on the night of the concert at the Wyandanch Junior High School. I further determined that no one at that location knew of any friend of Frederick Jennings other than a brother-in-law that had been referred to, but no one matching the description given by Frederick Jennings.

Q All right. Now, officer, if we can digress, for just a moment, during the course of this investigation -- and I'm talking about commencing on August 21st, did you have occasion to speak to Bernita Williams?

A Yes, I did.

Q All right. And was that on August 21st?

A Yes.

Q And, officer, did you have occasion to speak to Karen Freeman?

A Yes, I did.

Q And do you recall when that was?

A I believe that was on August 23rd.

Q Detective, did there come a time when you returned to the Suffolk County jail?

A Yes, I returned the following morning, that would have been August 27th, 1970, at approximately 10:30 or 10:40 in the a.m.

THE COURT: When was this, detective?

THE WITNESS: On the 27th, August 27th.

THE COURT: What time?

THE WITNESS: At approximately 10:30, 10:40 in the a.m.

Q And were you alone or with somebody at that time?

A At that time I was again with Detective Richard Dean.

Q And what was your purpose in returning to the jail?

A At that time I had decided in my opinion that Frederick Jennings had not told me the truth in regard to

his friend and I at that time felt he was a very good suspect in the murder of Mary Eloise Carman.

Q And this was based upon what, officer?

A On statements made to me by the people I had interviewed the night before and --

Q All right.

A And his personal knowledge of the location of the body.

Q All right. Now, detective, did you follow the same procedure on August 27th with regard to gaining access to Jennings?

A Yes, I did.

Q And did you request a permission slip or did you fill out one?

A Yes, one was signed by Frederick Jennings and signed by myself.

Q All right. Did there come a time that morning when you actually saw Frederick Jennings?

A Yes, I did.

Q And approximately what time did you actually see him?

A Around the same time, somewhere around 10:40 in the a.m.

Q And where did you see him?

A I saw him in one of the same rooms, a similar room in the same location where the other rooms were.

Q All right. Was it the same room?

A No, it wasn't. I believe it was -- it was, I think, a different room.

Q By the way, officer, can you describe both rooms for us, furniture, if any?

A It was a table and three chairs and that was it.

Q Any partitions?

A Each room was separated, you know, had a door and had a large window you could see through.

Q Were there any partitions within the room?

A Within the room that I was in?

Q Yes.

A It was -- no, it was just one basic room.

Q In other words, no, was there any areas separating the prisoner from you?

A No.

Q Vice versa?

A No.

Q Officer, to go back to the first day, August 26th, did you, did you have any conversations with Jennings as to

whether or not he knew Mary Eloise Carman?

A I had a conversation on the 27th in regard to, if he knew her or not. I'm sorry. On the 26th. He stated to me he did not know her personally.

Q Okay. And, officer, when you first saw Jennings on the 27th, what did he say to you and what did you say to him?

A When I returned on the 27th I told him that at this point I would have to advise him of his constitutional rights before I have any further conversation with him. At that time he told me that he knew all about his rights, he learned about his rights at the First Precinct, and I says, well, then you realize that again I'm going to have to advise you of your constitutional rights, and I advised him that if he would, as I read over these rights, to him, if he understood them when I asked them, if he understood them, would he say I do understand them. If he doesn't understand them, say no, I don't understand them and I'll explain them further. At that time, I stated to him that you have the right to remain silent, anything you say can and will be held against you in a Court of law, and at that point I stopped and I said, do you understand that? And he said, yes, I do. I advised him, you have the right to an attorney

and he can be present with you now before any questioning if you want one. I says, do you understand that? And he says, yes, I do. I says, if you cannot afford to hire an attorney, or a lawyer, -- I'm sorry, I used the word lawyer in each one of these sentences. I said, if you cannot afford to hire a lawyer, one will be appointed to represent you at no cost right now before any questioning if you wish one. Do you understand that? And he says, yes, I do. I says, now, do you understand all of these rights that I have just explained to you, and he says, yes, I do. I says, do you want a lawyer at this time? And he says, no, I don't need a lawyer and I don't want one. I said, now, having these rights in mind, do you wish to waive these rights at this time and speak to myself and Detective Dean in regard to the death of Mary Eloise Carman, and he says, yeah, I didn't do anything to that girl. My friend did it and I'll speak to you about it. I've got nothing to hide.

Q All right. Officer, what conversations, if any, ensued after that?

A At that time we were sitting around a table and I again said to him that I'd like to speak to him first of all about Mary Eloise Carman. I says, did you ever, are you sure you've never met the girl, being ~~that~~ your sister

goes to that school, is it possible that this girl ever came over to your house? Is it possible you were ever over to anybody else's house where that girl may have gone, and he says, no, I don't ever remember ever seeing Mary Eloise Carman and I said, did you ever -- did you hear about the fact that she was -- that she was missing or anything like that? He says, well, one time I was standing over on 21st Street with a bunch of -- group of people and he says, and this woman came up to me and I didn't know who she was, she come up and she says, have you seen my daughter? He says, lady, I don't even know your daughter. And he says, but at that time he says, I knew that that was the body that was over in the woods.

Q Officer, at this time, did he indicate when it was when he saw this woman?

A He said it was a couple of days after the concert.

Q Couple of days?

A Couple of days after the concert.

Q Now, officer, he previously told you he had not seen the body for one week after the concert?

A That's correct.

Q All right. Please continue.

A At that time he said the woman went around asking.

other people if they had seen the body, I mean, if they had seen her daughter and then she went away. I at that time, I asked him if he would please go over the story that he told me originally. I at that time -- I said to him, I find it very difficult to believe and I talked to my partner, we talked it over last night and we can't imagine you not knowing more about what happened to this girl and we find it very difficult. We want to believe you, but we find it very difficult to understand how you would only know this much and if you're any kind of friend of his, you would naturally inquire. It would be a natural thing for you to do to find out and inquire just how the girl died and all the circumstances surrounding it. At that time he told me, he says, I know everything that happened. I says, well, why don't you, right now, start over, let's start right from the very beginning, tell us just what happened. At that point he said, he says, well, -- I says, start over with the first time. The very first time your friend saw this girl. He says, well, the first time he saw her was on Jamaica Avenue, and I said, which way was she going? Which way was she going? She was going toward 21st Street. And he says, what happened then? I says, where was your friend at that time that he saw her? He says, well, my friend was standing right

near my house, on the side of the street. I says, well, what happened then? He said, well, he says, the next time, a short time later, he says, he saw the same girl walking down Levey Boulevard, and I says, well, what way was she walking at this point? He said, at that time she was walking towards South 26th Street. I said, where was your friend standing at that time? He says, he was standing near Brooklyn, Brooklyn Avenue. And I says, well, what happened then? He says, well, you know, it's all woods on the west side of 25th Street. It's all woods going down to Levey Boulevard and it's all woods on the south side of Levey Boulevard going towards 26th Street.

Q I'm sorry, officer, if I may interrupt for a moment. At the time you were speaking to Jennings, were you aware of these various streets, did you know these various locations?

A Yes, I did.

Q All right. Please continue.

A Well, at that point, I told him, I know what he's talking about. I know how it's all wooded there. Except for one house that's located on the north side of Levey Boulevard. He said, he said, at that time, his friend ran alongside of the woods on 25th Street down to Levey Boulevard.

He said that his friend crossed Levey Boulevard, went over onto the south side of Levey Boulevard and ran alongside of the woods west towards 26th Street. He said he caught her just as she made her turn and he grabbed her around the neck with one arm and he indicated like this, he said he took --

Q Indicating as if the forearm were placed around the neck?

A That's right. In a mugger-type hold. He said he then put his hand over her mouth and he dragged her into the woods almost right at that spot. He said when he dragged her into the woods, I asked him, well, what did he do when he got her into the woods? And then he said, he punched her in the stomach to get her down. Now, after he punched her in the stomach and she was on the ground, I says, well, what was he looking for, what did he want? He says, he wanted to -- he dragged her into the woods to get her rings. And I says, her rings? He says, yes. This -- I says, what would he do with the rings? And he said, that's how he gets his tuff. He says, you bring those rings in the city and you can get your stuff. And I says, you mean, the guy was a junkie? And he says -- I don't recall what word he used, but he agreed with the terminology that I used in regard to his friend as being a junkie. He said that his friend saw that the rings

were cheap and I says, well, what did he do then? He says, then he did his thing. I says, what do you mean by doing his thing? I says, what do you mean, did he have intercourse with the girl? And he says, you know, man, I don't have to tell you. And that's all he would say in regard to what had taken place with the girl at that point. I'm sorry. He said one additional thing. He said, all her clothes were off. And I says, yeah, and he says, well, you know, man, so, --

Q Officer, at that point, did the defendant make any inquiry of you about the body?

A Any inquiries to me about the body?

Q Yes, did he ask you a question at that point?

A Yes. He said, he said, were there any bones broken in the neck? And I said, no, there wasn't any broken bones in her neck. He said, you know why? And I said, no, why? He said, like this, and he put his hands over his mouth like that, indicating that that's how his friend had put a smothering hold on the victim.

MR. TIGHE: I object to that characterization, indicating that's what his friend did. What did he say? This is a confession, not summation, I mean a summary.

THE COURT: Well, right now, he's

presumably reporting a conversation that he had allegedly with this defendant. I'll take the conversation.

Q All right. Officer, after this demonstration, please continue.

A At that time the defendant told me that he knew of ways to strangle somebody without breaking any bones in the neck.

Q Now, he, meaning himself, or this friend?

A Himself, and he indicated that it was, that there was a certain art to it, I don't recall his exact words that he used in reference to how he could strangle somebody without breaking any bones, but he spoke for about two or three minutes on just that subject.

Q At that point, did he indicate where this friend had gone after dragging the girl into the woods or after leaving the woods?

A He said that at that point, he said his friend went to cross the tracks to Annie Pearl's house and met him over there. At that time he said they walked back to the railroad station, got in the car and he said his friend dropped him off at his house and his friend drove back to the city.

Q His friend drove back to the city?

A That's correct.

Q And he told you that the previous day?

A The previous day he said he drove his friend back to the city and he said his friend couldn't drive. At that time I asked him, whose car they were driving and he said, that him and his friend had both bought the car, but it was registered to his friend and he said that his friend couldn't drive a lick. He said that about a week later, his friend drove back out to his house and at that time he asked him if he wanted to see a body. And at that time he said, yeah. So they both went down to that same intersection of Levey Boulevard and South 26th Street and at that time they went to that same barren portion at the intersection and they walked right up to the edge of the woods and his friend pointed in and he looked in and he saw the body that he had described previously with no clothes on. Some clothes were at the feet of the body. He said the body looked white and he said that there was some kind of dark material or coat underneath the body. He said that, you know -- I asked him at that point, I said, well, why did your friend kill the girl? And he says, I don't know. He says, I don't know. The only thing I think he thought maybe she might have recognized him. And I said,

how could, this guy is from the city, how could she possibly recognize him? He says, I don't know. I don't know who his friends are. He said that at that time his friend drove back to the city, took the car and drove back to the city and he hadn't seen his friend since. After I -- the defendant told me that, I explained to him that there were an awful lot of discrepancies in the statement he gave me.

Q What discrepancies, if any, did you point out?

A I pointed out to him that, first of all, he had told me originally that it had been a week after the concert that he had first observed the body. I said that he told me that he had a conversation about two days after the concert with some people on 21st Street and that a woman who he believed to be the mother of the girl that had been left in the woods came up to him and asked him if he had seen her daughter. And at that time he had said I don't know your daughter, but in reality, he knew that that was the girl in the woods. And I said, that was a direct contradiction to what you had told me originally, that it had been a week elapsed in time before you observed the body. I said, second of all, you told me numerous times that your friend couldn't drive, that you drove him everywhere they went. Anytime they used the car. And I said, now, you've contra-

dicted that and you've told me that your friend drove back to the city and your friend drove out to your house and your friend dropped you off at your house. I explained to him that I had visited his girlfriend, Annie Pearl, and she had said to me that definitely he was not out at her house on the night of the concert at the Wyandanch Junior High School. So, she remembers distinctly that he was there the night before and she remembers that he was there the night after, but she remembers distinctly that he was not at her house. When I asked about any friend that he might have had, she told me distinctly, he didn't have any friends. He was the type of guy that hung out mostly by himself. The only time he had any friends was a relative or a future relative, I believe, at that time who was engaged to his sister.

Q Officer, did he say anything in response to your pointing out these discrepancies?

A He said to me, If I get Annie Pearl by the neck, she'll say that I was there. And I says, well, what do you mean by that? And he says, I get her by the neck and she'll say I was there. And I said, well, now, that isn't -- at that time he became -- his voice raised and he stood up and I told him to calm down and I explained to him that the story that he had told us at this point is unbelievable, that I

couldn't believe it. I've given an awful lot of thought to it. I says, quite frankly, I think that you yourself are at the point, you've been very cooperative, you've tried to be cooperative and I really believe that you want to tell us the truth.

Q Now, officer, if I may interrupt, at that point had the defendant's attitude been one of cooperation?

A Yes.

Q As opposed to hostility, for instance?

A Yes, very cooperative.

Q All right.

A At that time I advised him that, and again, I spoke to him for approximately 15 minutes in regard to the fact that I did not believe that he had a friend. I believed in fact, he was the one he was talking about. That he did all those things that he described and I believed that he was the person who did kill Mary Carman, and I repeated myself approximately three times along that vein. After a short time, Frederick Jennings had went down somewhat and I asked him, I said, were you the one who really, was it you and not your friend that did that, and he says, yeah, I did it. And I says, in other words, everything you told me that your friend did, you did, and at that point he nodded his head,

yes. I said, now, just so that I understand this, I said, are you saying that everything that you told me that your friend did in reality, you were the one that did it and you killed Mary Carman, and he says, yes. I said, well, now, let's go back to when you had all her clothes off and you're in the woods. Did you have an act of intercourse with her? And he says, I told you I did it, and that's all you need to know. He didn't want to talk any further about it. He told me that he didn't want to talk anymore about it. At that time he said, what's going to happen now? And I says, well, you're going to be arraigned for murder. He says, I am? I says, that's right. He says, you mean they're going to take me over in front of the Judge? And I says, that's right. And he says, they have to take these handcuffs off at that time, don't they? I says, sure, when you go before the Judge. He says, and the guards have guns, don't they? And I says, yes. Now, you're not going to try anything foolish, I hope? He says, yeah. He became a little bit, his voice changed at that point and he became threatening in his words. I asked him if he would agree to come to the scene where the body had been discovered. I would like him to indicate to me where he saw the clothes at the crime scene. He told me, he asked me how many people were going to be there. And I

says, there'll probably be four, five men there besides yourself. He says, are you going to take my handcuffs off there in the woods? And I said to him, if, the way you're talking now, no, I wouldn't do that. And to the best of my recollection, this more or less terminated the conversation on that date.

Q All right. Now, officer, you spoke to the defendant on two days; is that right?

A That is right.

Q At any time, did you ever strike him?

A No.

Q Did Dean ever strike him?

A No, sir.

Q Was any type of violence used on his person?

A No violence at all.

Q By the way, on the second day, did you break for lunch?

A On the second day we -- we finished at somewhere shortly after twelve noon and we left and --

Q Okay.

A I don't believe we interrupted at all at that time.

Q All right. Officer, you've testified basically in conversational tones; what were the tones or the level of

the conversation during this entire two day period?

A On my part I would say it was very much the same as I am talking right now.

Q And how about on the defendant's part?

A There were times that the defendant spoke on the same level that I am now and towards the end of the conversation there were a couple of times when his voice raised and he stood up and his voice changed somewhat.

Q Officer, did you make any promises to this defendant?

A No, I didn't.

MR. BUONORA: No further questions.
END OF HUNTLEY HEARING
May we approach the bench for a moment?

(At this point there was an off-the-record discussion between the Court and both counsel.)

MR. BUONORA: Your Honor, do you want to bring the jury back before the recess or after?

THE COURT: No, we'll have a ten minute recess and bring the jury back. All right.

MR. BUONORA: All right.

(At approximately 3:20 P.M. the Court recessed to Chambers.)

record discussion between the Court and both counsel.)

THE COURT: All right. Gentlemen, we'll recess for the day, and I'm going to ask you to come back tomorrow morning at 9:30, with the same admonition, you're not to discuss this case among yourselves, nor with anyone else; you're not to form any opinion until such time that all of the evidence is in and the case is given to you for your deliberations.

Please retire the jury.

THE CLERK: The audience will remain seated while the jury is being retired. Retire the jury

(At approximately 3:45 P.M. the jury was retired for the day.)

THE COURT: May I see both counsel, please?

(At this point there was an off-the-record discussion between the Court and both counsel.)

HUNTLEY HEARING CONTINUED

(Detective Halverson retakes the witness

stand.)

THE CLERK: I must remind you, sir,
y till under oath to tell the truth.

THE WITNESS: Yes, sir.

CROSS EXAMINATION BY MR. TIGHE:

Q Detective Halverson, I understood you went to
the Suffolk County Jail on August the 26th, 1970?

A Yes, sir.

Q And at this time, you requested to see the de-
fendant?

A Yes, I did.

Q Now, at that time, you knew the defendant was
there on other charges, did you not?

A Yes, I did.

Q Did you ascertain who his attorney was?

A No, I did not.

Q Did you make any effort to find out who his
attorney was?

A No, I didn't.

Q You knew he was under charges, didn't you?

A Yes, I did.

Q And you knew he must have had an attorney, didn't
you?

A Yes, I did.

Q Don't you know it's customary to call upon the attorney for the defendant if you wish to question any of his clients?

MR. BUONORA: I object to that. First of all, I don't know if it's customary. Second of all, --

MR. TIGHE: Well, let's find out.

MR. BUONORA: Whose custom, Mr. Tighe?

THE COURT: All right. Is that an objection?

MR. BUONORA: Yes.

THE COURT: All right. Sustained.

Q Did you notify his attorney?

A No, I did not.

Q Did you notify the warden what you were going to query him about?

A No, I did not.

Q Did you tell anybody the purpose of your visit?

A At the Jail?

Q At the jail or anyplace.

A I had a conversation with my superior officer at Homicide Squad.

Q When was that?

A That was Captain Joseph Bierni (sic.).

Q Did you tell him you were going to interview a person in custody?

A Yes, I did.

Q And did he, did he or did he not advise you to get in touch with his attorney?

A No, he didn't. The question of his attorney was not discussed at this point.

Q Not discussed at all?

A No.

Q When you went in there, you said you wanted to talk to him about a possible homicide.

A I, yes. I probably used the words to that effect, yes.

Q What did you say?

A Do you want me to start right from the very beginning again?

Q I want you to tell me what you told the defendant when you called him down -- or had him brought down to you.

A I stated to him, I introduced myself and Detective Richard Dean. At that time, I advised him I was with the Homicide Squad of the Suffolk County Police Department. I

stated that we were investigating the death of Mary Eloise Carman who we believed to be possibly the victim of a homicide and possibly a rape.

Q Did you tell him that he was under suspicion?

A I advised him that because of the fact that he had been arrested two times previous for a rape charge, I said, naturally, and being that you live close to the deceased, and close to the crime scene, you would naturally fall under the category of --

Q As a suspect?

A Some suspicion.

Q Yes. Did you tell him he was a suspect?

A I told him that along with other people he was naturally falling in a category of a suspect of some time.

Q And then at that time, did you give him any warnings of his rights?

A No, I did not.

Q As a matter of fact, you didn't give him any warning of his rights until the following day, did you?

A That's correct.

Q And you had how many hours of conversation with him on the 26th?

A I spoke to him from approximately 10:40 in the a.m.

until approximately 11:30. I spoke to him again about five minutes after one, until approximately 4:30 in the P.M.

Q And you did nothing but discuss the death of Mary Eloise Carman, did you?

A No, that's not true.

Q What else did you discuss?

A We discussed his home life. We discussed his prior arrests, we discussed in great depth, his problem, sex problem.

Q Let me hear what problem you discussed with him about sex.

A I told him that after reading the arrest reports that I saw in regard to his previous arrests that I believed that he was at least guilty of one of the charges that were made against him.

Q Was that the discussion of his sex problem?

A Well, I --

Q I want to know what you discussed with him with regard to his sex problem.

A Well, I was leading up to that, if you will allow me to.

Q All right. Go ahead. I'm sorry.

A I advised him that the nature of those crimes were

revolved around sex, and the fact that he would drag a girl into the woods and take their clothes off and commit an act of forcible intercourse on them. At that time I stated to him, that I felt it was a natural thing to have intercourse with a man and female, but I feel that the only way that he is completely off base is the fact that he is doing this against the will of a young girl and actually --

Q Excuse me, just let me interrupt you there.

A Yes.

Q At that point, did you have any evidence or any knowledge whatsoever that a rape or intercourse had taken place on June the 4th in the woods?

A Would you -- any knowledge, sir?

Q Yes, any information or any knowledge that an intercourse --

A Well, my --

Q What?

A As a homicide investigator and former investigator with the 6th Squad for a period of -- total of five and a half years, it's been -- some of the -- the nature of this crime against this girl that I was investigating indicated to me that she had been raped.

Q Well, what was the indication that she had been

raped.

A The fact that her clothes had been taken off, the fact that I had received -- well, I had had a conversation with our lab man who indicated to me that a substance left on a part of the clothing of the victim was in all likelihood the results of a male spermatozoa or in other words the result of an ejaculation of male sperm. Also, the very nature of the location where the body was found indicated to me that -- that -- that there was a possibility that a rape had occurred.

Q No indications, however, on the body, was there?

A The body was very badly decomposed and in fact --

Q I just asked you a simple question.

MR. BUONORA: Your Honor, I think the officer is trying to answer the question the best way he can.

MR. TIGHE: No, I'm asking whether there was any indications on the body or remains of a rape.

A No, there wasn't.

THE COURT: All right. There wasn't.

Q Now, what time did you return again the following day?

A Approximately the same time, about 10:30 or 10:40 in the a.m.

Q And at that time, did you give him his rights?

A Yes, I did.

Q Now, what was the occasion of giving him his rights at that time?

A At that time I had made an investigation based on some of the statements given to me by Jennings and based on some of the conversation I had with other people the night before that led me to believe that Frederick Jennings was not telling the truth.

Q That was based on information you gained, gleaned from him the day before; is that it?

A A part of the information, yes.

Q And you went back and told him you didn't think he was telling the truth?

A That's correct. I told him -- at that time I suspected him of killing Mary Eloise Carman.

Q Now, this was a homicide investigation?

A That's correct.

Q Did you make any notes whatsoever?

A Yes, I did.

Q Have you got them here?

A Yes, I believe they're with the -- Mr. Buonora.

MR. TIGHE: May I see them, please?

MR. BUONORA: Yes. Your Honor, I'm turning over to counsel, Police Department forms UR-34 dated August 26th of 1970 and one dated August 27th of 1970 relative to the interview with the defendant.

(Shown to Mr. Tighe.)

MR. TIGHE: If your Honor will recall, I called for these in your Chambers some week or two ago and was advised there was nothing but oral statements.

MR. BUONORA: And I'm still advising you that there's nothing but oral statements, counselor.

MR. TIGHE: No, this is not. This is a statement which I asked you for specifically, whether there was a report made by the officer and you said, I'll make up a memorandum or a summary of it and give it to you. Now, those are exactly -- exactly what happened before Judge Signorelli.

MR. BUONORA: Judge, I have no

recollection of any such conversation. Counsel inquired if there was a written statement from this defendant and I told him there was none and I continue to tell him that there were none. What he has in his hand is the officer's report, his UR-34.

THE COURT: Of the conversation that he conducted with this defendant?

MR. BUONORA: Right, it's the officer's summary of his conversation.

MR. TIGHE: That's specifically what I asked for in Chambers.

THE COURT: All right, Mr. Tighe. Let's proceed.

MR. TIGHE: Now, your Honor, bear with me so I can review them.

THE COURT: Of course.

THE WITNESS: Could I make one correction in my testimony, your Honor?

THE COURT: Mr. Tighe, you want him to say anything else?

MR. TIGHE: Wait until I finish.

THE COURT: All right.

(At this point, Mr. Tighe looked at papers at counsel table for approximately ten minutes.)

Q Now, at any time while you were interviewing the defendant, Jennings, did you have a pad and pencil that you could make notes with?

A No, I didn't.

Q Did Detective Dean?

A No, I don't believe he did.

Q Well, did you at any time see any notes made as a result of these interviews other than what you have here?

A I don't recall any note taking at all -- wait, I believe we took the names of an -- Annie Pearl -- I think that was about all. We just took Annie Pearl's name.

Q Well, was there any statement or any paper which you asked the defendant to sign?

A No.

Q Even when, as you say, he said he did it, that's all you need to know, you didn't get him to sign a statement to that effect?

A He said when we were through talking to him at that time that he didn't want to discuss it any more and he didn't want to talk about it any more.

Q Did you ask him to sign any paper?

A No, sir.

Q And that, before or after he said that.

A Would you repeat --

Q I'll withdraw it. When you went in there and said you wanted to talk to him about a murder case, did you ask him whether he would be willing to sign any documents or any confession for you?

A We didn't discuss that at all.

Q Did you discuss it at the conclusion of your interview?

A No, he told me he didn't want to talk any more about it and that was the end of our conversation.

Q Well, did you say, I'll make a summary of this and come back, will you sign it?

A No, I didn't, I didn't say that.

Q Now, right up to the end of the second day of questioning, he denied any participation in this; didn't he?

A Yes -- yes, sir.

Q And if I recall your testimony earlier this afternoon, you said toward the end he got excited and he got up and got sort of mad; is that it?

A He -- his voice raised and he did stand up a

couple of times and he did get mad as you say, yes.

Q Yes. And then he said, all right, I did it; is that it?

A Well, as I stated before, I stated how he said that and what led up to it.

Q Now, prior to that, had you said that you had to close this case, that you would take it up with the District Attorney, you wanted to close this case, this homicide case?

MR. BUONORA: I don't know if I should object. I don't recall any such investigation.

THE COURT: I don't recall it, either.

MR. TIGHE: I say, did you say to the defendant --

MR. BUONORA: Oh. Did you say that to the defendant.

A Would you repeat?

Q Did you say that you would take it up with the District Attorney, of going easy on him and you wanted to close out the case?

A No, sir.

Q Now, prior to August 27th, 1970, how many people had you interviewed with respect to this case?

A In total, I would say approximately 30 to 35 people.

Q Did you make any memorandum or any other notes as to what they had said to you?

A Yes, I made reports, yes.

Q Are they available?

A I have them.

Q May I see them?

MR. BUONORA: I'm going to object to the production of those documents, your Honor.

THE COURT: Why do you require those documents, Mr. Tighe?

MR. TIGHE: I want to see if there is anything, any discrepancy between the earlier documents and the documents I hold in my hand as to what the facts were.

MR. BUONORA: Any other document would have no relationship to the conversation that he had with this defendant. It would only relate to interviews with other persons.

THE COURT: All right. In the interest of justice, I'll permit him to see them. Do you have those reports, Mr. Buonora?

MR. BUONORA: I don't have them in the courtroom -- do we have them here?

THE WITNESS: I believe you have them.

MR. BUONORA: Just one thing, the officer talked about interviewing 30, 35 people, what does Mr. Tighe want at this point? We're talking about 35 --

THE COURT: Supposing you try to limit it, Mr. Tighe, to what you really--

MR. TIGHE: Yes.

Q How many reports did you make in this case?

A I made a report for each day following the discovery of the corpse.

Q Did you make any reports of conversations you had with other people?

A Yes, sir, I did.

Q Those are the ones that I would like to see.

A I would have to go through them.

MR. BUONORA: Your Honor, I prefer to have the witness produce them myself. He knows his file much better.

THE COURT: All right. Fine.

(Witness looking through file.)

A The second two pages of this report. This would be on the date of the discovery.

MR. BUONORA: Officer, would you mind reading into the record what report you're producing?

THE WITNESS: This is page two of a report dated 8/21/70. That's page two and three, I'm sorry. That is in regard to interviews that I had at the scene and near the scene of the discovery of this body.

THE COURT: You want to see that?

MR. TIGHE: Yes, sir.

MR. BUONORA: Excuse me. With the Court's permission -- officer, will you indicate what the report number is, the form number for the record?

THE WITNESS: What's that, the report number?

MR. BUONORA: Form record for it.

THE WITNESS: This is central complaint number, they're all going to be the same, 70-188387 and all of these are entitled investigation of death and the complaint on it is Mary Eloise Carman. This report here is dated 8/24.

Q By the way, officer, where did you first get the

information about the death occurring by strangulation?

A I first got that information from Frederick Jennings.

Q I see. Any others?

A I would just like it to be noted that there are interviews on these reports and also other investigations. So, you're primarily interested in the interviews.

Q That's all I'm interested in.

(Reports shown to Mr. Tighe.)

THE COURT: Detective, are there any others that you have there?

THE WITNESS: No, that's it.

THE COURT: Let the record show what report you just gave him, officer.

THE WITNESS: I gave him a report under the same C. C. number which would have been dated 8-22-70, 8-23-70, 8-24-70, and 8-25-70.

Q Did you take a polygraph test in this case?

A Do you mean did I personally take them, sir?

Q Were they taken of witnesses?

A YES.

Q Supposed witnesses.

A Yes, they were.

Q Did you have a polygraph machine with you when you visited him?

A No, I did not.

Q How come?

A It's a machine that cannot be transported.

Q Did you ask him to go have a polygraph test?

A No, I didn't.

Q What was the purpose of the polygraph test with Mr. and Mrs. Carman?

A I believe there was a test taken of Mr. Carman.

Q Yes. Was he at that time a suspect?

A Yes, he was.

Q He was a suspect because of difficulties he had with his daughter?

A No. He was at that point. Like I said before, everyone was a suspect. A general suspect we call it, and we weren't -- we didn't rule anybody out of the investigation.

Q But he was the only one that you had a polygraph taken of?

A No, that --

Q Who was the other?

A I think if you'll go further in the report, you'll see an indication of where someone else was given a polygraph

test. Jervey Allen.

Q Darvey --

A Jervey.

Q That was her boyfriend, wasn't it?

A We never established that that was her boyfriend,
no. And in fact, I don't believe it was her boyfriend.

Q Did you ever interview Jervey Allen?

MR. BUONORA: I'm sorry. Could I hear
that name, Judge?

MR. TIGHE: Jervey Allen.

A Yes, I did.

Q Where did you interview him?

A He was interviewed at the Homicide Squad in
Hauppauge.

Q Did he make any statement?

A What -- he made a statement, yes. What kind of
statement -- are you referring to a particular kind of state-
ment, sir?

Q Well, did he make a statement as to his movements
that day, that night?

A I don't believe that he could recall that night
in particular, but he stated that he knew nothing of Mary
Eloise Carman's death and --

Q Well, did you ever interview James Green?

A Yes, I did.

Q You got a statement from him, didn't you?

A I spoke to him and he gave me a statement, yes.

Q Did you put that in writing?

A I don't believe I did, no. I did not.

Q Didn't he state to you or state to somebody that she was stabbed in the back in New York City?

A There was a number of people who had heard a rumor to that effect and he was one of the people who related having heard this from an Edna Brown. Subsequently, Edna Brown was interviewed and some other girls in the neighborhood and it was found to be more or less something that they had dreamed up.

Q How did you determine that it was dreamed up?

A I interviewed all --

MR. BUONORA: I'm going to object for the purposes of this hearing. I think this is beyond the scope of the issues involved here.

MR. TIGHE: I disagree, your Honor. Here's a confession, an oral confession.

THE COURT: All right. Proceed, proceed, Mr. Tighe. Objection is overruled.

Q Did you reduce anything that this James Green said to writing?

A No, I didn't.

Q And how and where did you interview him?

A He was interviewed on a telephone. First of all, there came another time that he was interviewed at the Homicide Squad in Hauppauge.

Q Did you make the interviews?

A I was a part of the interview, yes.

Q Did Dean?

A I believe Dean might have been present at that time. I can't recall offhand.

Q Well, did you question more than once this James Green or Jervey Allen with respect to this crime?

A Jervey Allen was questioned one time at the Homicide Squad and he willingly submitted to a polygraph test and when that was concluded, that was the last time I interviewed --

Q Did you give him a test?

A Yes, he was given a polygraph test.

Q How about James Green?

A James Green was not given a polygraph test.

Q How long did James Green remain a suspect?

A He was, again, I say, they were all suspects until subsequently I received a confession from Frederick Jennings. At that time, they were no longer a suspect.

Q And that was the oral confession that you testified to here earlier this afternoon?

A That's correct.

Q At the end of the two day conversation?

A That's correct, sir.

Q Well, did you go into the sex problem of James Green?

A Yes, I did.

Q He had a different problem, didn't he?

A Yes, he did.

Q Did you make any inquiry, officer, with respect to any absences from home of Mary Eloise Carman?

A Any absences from home?

Q Well, I mean unauthorized absences, going away from home or running away from home?

A Yes, I did.

Q How many times was that?

A I believe she had run away from home about four years prior, three or four years prior for a period of three or four days.

Q And did you find out where she went?

MR. BUONORA: Again, I object to this as being beyond the scope of the issues involved here.

THE COURT: I'm going to sustain the objection, Mr. Tighe.

MR. TIGHE: I'll respectfully except.

Q Now, did you make out written statements for all of these people to sign, such as Jervey Allen -- Jervey Allen and the Green --

A No, sir.

Q And you didn't give the defendant his Constitutional rights until the second day of your interview with him in the Suffolk County jail?

A That's --

Q And nothing was reduced to writing; is that it?

A That's correct, sir.

MR. TIGHE: I have no further questions.

THE COURT: Any further questions?

MR. BUONORA: Just one.

REDIRECT EXAMINATION BY MR. BUONORA:

Q Officer, you had indicated previously that you

wanted to correct something?

A Yes. I just wanted to, he had asked me if this was a homicide investigation. It was an investigation that was conducted by Homicide and it was handled as an investigation of death and it was subsequently changed to a Murder on the 27th.

Q As a matter of fact, officer, you gave Mr. Tighe your UR-34 report dated August 26th of 1970, a few minutes ago.

A That's correct.

Q And the classification on that report is Investigation of Death?

A That's correct.

Q And when for the first time was this classified as a Murder?

A That was reclassified to a Murder on the 27th.

Q That would be after your conversations with the defendant?

A That's correct.

MR. BUONORA: Nothing further, your Honor.

THE COURT: Any further questions?

MR. TIGHE: No further.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW ON
MOTION TO SUPPRESS CONFESSION,
Hon. Ernest L. Signorelli,
County Court, Suffolk Court
pp. 338-346.

within the meaning of Miranda and secondly, even if one were to assume that the first day's statements were to be suppressed, I would submit that no information was derived from this defendant which would be considered the fruit of a poisoned vine or poisoned tree and that the second day's statements, when the proper Miranda warnings were given would be admissible under the doctrine of Stephen J. B. and similar cases.

THE COURT: All right. This 15 year old girl named Mary Carman was reported missing on June 5th, 1970. She had been last seen alive around midnight on June 4th. On August 21st, Schyler Carman, the father, found a dress-jacket at a wooded area near his home and then after further investigation by him, he found what appeared to be skeletal remains in the interior of the wooded area. He notified the Police and an investigation was conducted by the Homicide Squad of the Suffolk County Police Department. Detective Halverson was in charge of this investigation and he indicated that at the outset, that it was characterized as a homicide resulting in death.

After speaking to the defendant, however, and concluding his interview with him on August 26th and on the 27th, he later changed his classification to that of a Murder investigation.

Now, Detective Halverson stated that he interviewed many suspects before deciding to interview the defendant, Jennings. He concluded that the defendant was a likely suspect because he was presently incarcerated in the Suffolk County Jail awaiting trial on two other indictments involving the r of other women and in addition he lived in close proximity to the residence of the deceased girl. Detective Halverson on August 26th then proceeded to visit the defendant at the jail and prior to interrogating him signed --- the defendant signed a form agreeing to speak to the detective. This is a permission slip as required by the rules and regulations of the Suffolk County Jail.

I find as a fact that the defendant voluntarily and from his free will spoke to the police concerning this case and that at no time was he struck, threatened, coerced or promised.

anything. I further find that when the defendant spoke to the Police at the Suffolk County Jail on August 26th and 27th he was in Police custody within the meaning of the Miranda decision and by Detective Halverson's own testimony, he was a likely suspect and therefore at that moment, the Police investigation was focused on him. That being the case, he was entitled to the four required warnings as outlined in the Miranda case relating to his right to remain silent and his right to counsel.

On August 26th, 1970, the defendant conversed with Detective Halverson and his partner, Detective Dean, was present and among other things, he told the detective that I thought you would eventually come to see me a long time ago, that I saw the body. He indicated with his finger where the body was found, said that she died by strangulation, a common mugging method used by a friend. He talked about this friend having visited him on the night of Carman's death. Mary Carman's death. That, a week later, the friend came back and showed him the body and he said he saw some dark

material under the body and the body appeared to be white.

I find that on this occasion, namely, the interview conducted on August 26th, that the defendant was not given any of the warnings mandated by the Miranda decision. That the detectives then returned on August the 27th and again spoke to the defendant at the jail and that the defendant on this occasion signed a permission slip indicating his willingness to speak to them. On this occasion, the defendant was adequately advised as to his Constitutional rights to counsel and to remain silent and on this occasion, the defendant told the Detective Halverson that he knew everything that had happened the night that Mary Carman was killed. He then explained that his friend first saw Mary walking on Jamaica Avenue and later on his friend saw her walking on Levey Boulevard and he said, he stated that his friend was on 25th Street near the Jennings' house when he saw her on Jamaica Avenue and that he was on 25th Street near Brooklyn Avenue when he saw Mary Carman walking on Levey Boulevard. The

defendant the. stated that his friend came up behind the deceased as she turned the corner and grabbed her, put his hand over her mouth and dragged her into the woods. The defendant then related how his friend struck the deceased in the stomach and knocked her down; that he originally had dragged her in the woods to steal the rings that she was wearing, but later when he decided the rings were cheap, he decided to do his thing and when he was asked what he meant by that, he said that all her clothes were off and I don't have to say anymore about it. When he was asked how she was strangled, the defendant gestured and in such a manner as to indicate the position of a mugger's hold. The defendant stated that his friend didn't say anything about the killing of the girl that night, but a week later returned and asked him if he wanted to see a body and after going to the intersection of Levey Boulevard and 26th Street and viewing the body, the defendant stated that his friend drove back to the city.

The defendant stated he returned a few days later and viewed the body again and it

looked white. After further questioning, the defendant finally admitted that he was the one who had killed the girl, Mary Carman, stating, yes -- yeah, I did it, and when he was asked by the detective if he did it in the way he said his friend had done it, he shook his head yes and the detective then asked the defendant if he completed an act of intercourse with the deceased and he said, I told you I did it and that's all you need to know.

I find as a fact that when the Police questioned the defendant they knew he was incarcerated on two other indictments and consequently knew or should have known that he was an indigent and that counsel had been assigned to him by the Court to represent him on these other charges. I find further as a fact when the defendant was questioned on August 26th and August 27th, the defendant had not been arrested for this charge of Murder and that moreover, no formal proceedings had been commenced with regard to the prosecution of the Murder charge. Since the defendant was represented by counsel on the other charges and

the Police knew or should have known this fact, the question that one should ask one's self is, under those circumstances, did they have the right to question him without first notifying his court appointed attorney.

Now, the Court of Appeals has recently decided in the cases of People against Lopez, 28 N.Y. 2d, page 23, and People against Taylor, 27 N.Y. 2d, page 327, that it is permissible for the Police to question a suspect who is incarcerated on other unrelated charges and represented by counsel on these charges providing he is adequately advised as per the Miranda decision and thereafter intelligently and knowingly waives his Constitutional rights to counsel and to remain silent. The People, however, in this case, are confronted with the additional obstacle that on August 26th the defendant was not given the required Miranda warnings and queried, does this vitiate the oral confession which was given by the defendant on August 27th, the day following after he had been adequately advised. That is, since the admission, the admissions procured from the defendant on the

preceding date must be suppressed. Does it necessarily follow that the oral statement obtained from the defendant on the following day must similarly be suppressed.

In *People versus Stephens* decided by the Court of Appeals in 23 N.Y. 2d, page 611, this case holds for the proposition that a defendant whose admissions were impermissibly obtained because he was not adequately advised as to his Constitutional rights, may nevertheless thereafter waive his Constitutional rights after first being adequately warned and any confession thereafter procured from the defendant will be considered to be admissible.

In view of the foregoing, this Court therefore holds that the defendant's motion to suppress, the oral statements, is granted to the extent that the oral statements of the defendant given on August 26th are hereby ruled inadmissible since he was not given the required Miranda warnings and secondly, the oral statements of the defendant on August 27th are hereby ruled admissible since defendant was adequately advised on that

occasion and that he intelligently and knowingly waived his Constitutional rights to counsel and to remain silent, and I rule this way under the authority contained in People versus Stephens.

That's my decision, gentlemen.

MR. TICHE: May I respectfully have my exception, your Honor?

THE COURT: Yes, your exception is duly noted.

MR. TICHE: As to the second part of your ruling.

THE COURT: All right. Are we ready to proceed, gentlemen?

MR. BUONORA: People are ready, your Honor.

THE CLERK: The Court will now recess to Chambers.

(At approximately 2:20 P.M. The Court recessed to Chambers.)

RECESS

(At approximately 2:22 P.M. the jury was returned to the courtroom. At approximately 2:26 P.M. the Court returned to the courtroom and